(12)

No. 95-566

In The

Supreme Court of the United States

October Term, 1995

STATE OF MONTANA,

Petitioner,

v.

JAMES ALLEN EGELHOFF,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Montana

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BRIEF OF THE STATES OF DELAWARE, ALASKA, ARKANSAS, HAWAII, KANSAS, MISSOURI, OKLAHOMA AND SOUTH DAKOTA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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25 pp

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TABLE OF CONTENTS

		Page
TABLE OF AUTHORITIES		ii
INTERESTS OF AMICI CURIAE		1
SUMMARY OF ARGUMENT		2
REASONS FOR GRANTING THE WRIT		4
I.	The States, as a Matter of Public Policy, May Make Irrelevant Evidence of Voluntary Intoxication	4
II.	The Montana Supreme Court's Decision Conflicts With This Court's Rulings and Threatens to Limit the State's Ability to Define Offenses and Adopt Evidentiary Rules	11
CONCLUSION		17

TABLE OF AUTHORITIES

CASES **Page**

Abruska v. State,
705 P.2d 1261 (Alaska App. 1985) 5

Chambers v. Mississippi,
410 U.S. 284 (1973) 11-16

Commonwealth v. Graves,
334 A.2d 661 (Pa. 1975) 8

Commonwealth v. Rumsey,
454 A.2d 1121 (Pa. Super. 1983) 4, 6

Foster v. State,
374 S.E.2d 188 (Ga. 1988),
cert. denied, 490 U.S. 1085 (1989) 4

Hawkins v. State,
605 S.W.2d 586 (Tex. Crim. App. 1980) 4

In re Winship,
397 U.S. 358 (1970) 10

Lanier v. State,
533 So. 2d 473 (Miss. 1988) 4

Martin v. Ohio,
480 U.S. 228 (1987) 10

McDaniel v. State,
356 So. 2d 1151 (Miss. 1978) 7

TABLE OF AUTHORITIES - Continued

Page

McMillan v. Pennsylvania,
477 U.S. 79 (1986) 10

Michigan v. Lucas,
111 S. Ct. 1743 (1991) 11, 16

Mullaney v. Wilbur,
421 U.S. 684 (1975) 10

Ohio v. Roberts,
448 U.S. 56 (1980) 11

Patterson v. New York,
432 U.S. 197 (1977) 9-11

People v. Hood,
462 P.2d 370 (Cal. 1969) 5

People v. Rocha,
479 P.2d 372 (Cal. 1971) 5

Pharo v. State,
783 S.W.2d 64 (Ark. Ct. App. 1990) 4

Rivera v. Delaware,
429 U.S. 877 (1976) 9

Rock v. Arkansas,
483 U.S. 44 (1987) 11

State v. Erwin,
848 S.W.2d 476 (Mo. 1993),
cert. denied, 114 S. Ct. 88 (1994) 4

TABLE OF AUTHORITIES - Continued

Page

State v. Ramos,
648 P.2d 119 (Ariz. 1982) 4

State v. Souza,
813 P.2d 1384 (Haw. 1991) 4

State v. Stasio,
396 A.2d 1129 (N.J. 1979) 6, 8

State v. Vaughn,
232 S.E.2d 328 (S.C. 1977) 4

United States ex rel. Goddard v. Vaughn,
614 F.2d 929 (3d Cir. 1980) 5, 9

United States v. Dotterweich,
320 U.S. 277 (1943) 9

United States v. Park,
421 U.S. 658 (1975) 9

White v. State,
717 S.W.2d 784 (Ark. 1986) 4

Wyant v. State,
519 A.2d 649 (Del. 1986) 4

FEDERAL MATERIALS

United States Constitution
Amend. V . . . . . Passim
Amend. VI 16
Amend. XIV 1

TABLE OF AUTHORITIES - Continued

Page

Federal Rules of Evidence, Rule 412 . . . . . 15, 16

Supreme Court Rules, Rule 37 1

STATE MATERIALS

Arizona Revised Statutes Annotated, § 13-503
(1980, 1993) 4

Arkansas Code Annotated, § 5-2-207 (Repl. 1993) 4

Delaware Code Annotated, tit. 11, § 421 (Repl. 1987) . . 4

Hawaii Revised Statutes, § 702-230 (1986) 4

Missouri Revised Statutes, § 562.076 (1983) 4

Official Code of Georgia Annotated, § 16-3-4 (1968) . . . 4

Pennsylvania Consolidated Statutes Annotated,
tit. 18, § 308, (Purdon 1979) 4

Texas Penal Code Annotated, § 8.04 (Vernon 1974) 4

OTHER AUTHORITIES

Alcohol Abuse and the Law, 94 Harv. L. Rev.
1660 (1981) 6

Hall, *Intoxication and Criminal*
Responsibility, 57 Harv. L. Rev. 1045 (1944) . . . 5

TABLE OF AUTHORITIES - Continued

Page

Intoxication as a Criminal Defense, 55 Colum. L. Rev. 1210 (1955) 6, 7

Intoxication as a Defense to a Criminal Charge in Pennsylvania -- Sequel, 76 Dick. L. Rev. 324 (1976) 7, 8

Murphy, *Has Pennsylvania Found a Satisfactory Intoxication Defense?*, 81 Dick. L. Rev. 199 (1977) 8

Paulsen, *Intoxication as a Defense to Crime*, 1961 U. Ill. L.F. 1 5

Wayman, *Lucas Comes to Visit Iowa: Balancing Interests Under Iowa's Rape-Shield Evidentiary Rule*, 77 Iowa L. Rev. 865 (1992) 15

INTERESTS OF AMICI CURIAE

The amici curiae States, through their respective Attorneys General, submit the following brief pursuant to Supreme Court Rule 37. The amici curiae States administer criminal justice systems within their jurisdictions to promote the safety and welfare of their citizens. The holding of the Supreme Court of Montana construes the Due Process Clause of the Fifth Amendment, which is applicable to all states through the Fourteenth Amendment. The holding directly conflicts with decisions from other states. It also incorrectly interprets the decisions of this Court, thereby threatening to limit the ability of States to declare, as a matter of public policy, that persons who commit crimes while voluntarily intoxicated may be held responsible for their criminal conduct, despite their intoxication.

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SUMMARY OF ARGUMENT

The Montana Supreme Court construes the Due Process Clause to guarantee a criminal defendant an absolute right to present and have the jury consider evidence of voluntary intoxication in order to rebut the State's evidence regarding mental state. That reading of the Due Process Clause assumes that the State's burden of proof is somehow relieved as to the element of mental intent if the jury cannot consider evidence of voluntary intoxication when determining whether the defendant acted "purposely" or "knowingly." The state court, however, incorrectly analyzed the due process issue. The statute in question does not affect the State's burden of proof as to any element of the offense charged. Instead, the statute simply makes evidence of voluntary intoxication irrelevant to a determination of mental state which is an element of the crime. This is a legitimate exercise of the State's authority to define criminal offenses and adopt rules governing the presentation of evidence.

The critical issue is whether States may, consistent with the Due Process Clause, preclude the use of voluntary intoxication evidence to negate mental state as a matter of public policy. A number of States have considered this issue and have concluded that evidentiary restrictions on the use of voluntary intoxication evidence do not violate due process. This Court has never addressed the issue directly, although in prior decisions the Court has traditionally deferred to the States in defining offenses and adopting evidentiary rules. Only in the most exceptional circumstances has this Court tempered the States' authority in this regard on the basis of the Due Process Clause.

The state court's failure to consider these points elevates the Respondent's due process right to defend to a new constitutional standard. In addition, the decision portends an unreasonable limit on the State's authority to adopt rules and procedures regarding the presentation of evidence. In these respects, the ruling goes beyond this Court's decisions which

have considered these competing interests in other contexts. Because the Court has never addressed the constitutionality of legislative limitations on voluntary intoxication evidence, and because of the disparity in the treatment of the issue by the various states, this Court's guidance is necessary.

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REASONS FOR GRANTING THE WRIT

I. The States, as a Matter of Public Policy, May Make Irrelevant Evidence of Voluntary Intoxication.

The Montana legislature, as have other state legislatures,[1] has eliminated voluntary intoxication as a defense to criminal conduct and has made evidence of

[1] *State v. Ramos*, 648 P.2d 119 (Ariz. 1982) (Ariz. Rev. Stat. Ann. § 13-503 (1980), *see also* § 13-503 (1993)); *White v. State*, 717 S.W.2d 784 (Ark. 1986) (Ark. Code Ann. § 5-2-207 (Repl. 1993)), *see also Pharo v. State*, 783 S.W.2d 64 (Ark. Ct. App. 1990); *Wyant v. State*, 519 A.2d 649 (Del. 1986) (Del. Code Ann. tit. 11, § 421 (Repl. 1987)); *Foster v. State*, 374 S.E.2d 188, 194-95 (Ga. 1988), *cert. denied*, 490 U.S. 1085 (1989) (Ga. Code Ann. § 16-3-4 (1968)); *State v. Souza*, 813 P.2d 1384 (Haw. 1991) (Haw. Rev. Stat. § 702-230 (1986)); *Lanier v. State*, 533 So. 2d 473 (Miss. 1988); *State v. Erwin*, 848 S.W.2d 476 (Mo. 1993), *cert. denied*, 114 S. Ct. 88 (1994) (Mo. Rev. Stat. § 562.076 (1983)); *Commonwealth v. Rumsey*, 454 A.2d 1121 (Pa. Super. 1983) (18 Pa. Cons. Stat. Ann. tit. 18, § 308 (Purdon 1976)); *State v. Vaughn*, 232 S.E.2d 328 (S.C. 1977); *Hawkins v. State*, 605 S.W.2d 586 (Tex. Crim. App. 1980) (Tex. Penal Code Ann. § 8.04 (Vernon 1974)).

voluntary intoxication irrelevant for purposes of establishing the defendant's mental state. Resolving the question of the degree of criminal responsibility to be borne by intoxicated offenders,[2] these states have decided that the balance underlying the "specific intent, general intent" rule[3] fails to respond to the dangers of the intoxicated actor and underestimates the evidentiary problems in establishing the subjective state of mind of the drunken offender. Recognizing that alcohol and drug intoxication are factors involved in a

[2] *See Abruska v. State*, 705 P.2d 1261, 1265 (Alaska App. 1985); *People v. Rocha*, 479 P.2d 372, 375-76 (Cal. 1971); *People v. Hood*, 462 P.2d 370, 377-79 (Cal. 1969).

[3] Under common law, voluntary intoxication was not a defense in a criminal prosecution, even though the intoxication had prevented the defendant from understanding his actions, having the required culpable mental state, or remembering the events. *See generally United States ex rel. Goddard v. Vaughn*, 614 F.2d 929, 934-35 & nn.5-7 (3d Cir. 1980). In the nineteenth century, the courts, in an effort to mitigate the common law rule, crafted a new rule, allowing evidence of voluntary intoxication to negate the required mental state in "specific intent" crimes, but making the evidence inadmissible for "general intent" crimes. *See generally* Hall, *Intoxication and Criminal Responsibility*, 57 Harv. L. Rev. 1045, 1046-49 (1944); Paulsen, *Intoxication as a Defense to Crime*, 1961 U. Ill. L.F. 1, 10-11.

substantial number of crimes,[4] those legislatures tie together three policy strands to resurrect the common law approach and make voluntary intoxication inadmissible to negate any level of culpability. Initially, those bodies determine that the prevalence of alcohol's contribution to crime requires, for purposes of general deterrence, a substantial relaxation of the "normal" culpability requirements.

> This course [specific intent, general intent rule] thus undermines the criminal law's primary function of protecting society from the results of behavior that endangers the public safety. This should be our guide rather than concern with logical consistency in terms of any single theory of culpability, particularly in view of the fact that alcohol is significantly involved in a substantial number of offenses. The demands of public safety and the harm done are identical irrespective of the offender's reduced ability to restrain himself due to his drinking.

State v. Stasio, 396 A.2d 1129, 1134 (N.J. 1979) (footnotes omitted). Those legislatures surmise that, regardless of the

[4] *See Rumsey*, 454 A.2d at 1124; Note, *Alcohol Abuse and the Law*, 94 Harv. L. Rev. 1660, 1681-82 (1981); Note, *Intoxication as a Criminal Defense*, 55 Colum. L. Rev. 1210, 1210 & n.1 (1955).

culpable mental state required of the sober actor, "if a person casts off the restraints of reason and consciousness by a voluntary act, no wrong is done to him if he is held accountable for any crimes which he may commit in that condition. Society is entitled to this protection." *McDaniel v. State*, 356 So. 2d 1151, 1160-61 (Miss. 1978). *See* Note, *Intoxication as a Defense to a Criminal Charge in Pennsylvania -- Sequel*, 76 Dick. L. Rev. 324, 331 (1976) (deterrence approach "reflects the old view that voluntary intoxication is such a dangerous vice that public order and discipline require that defendants should not be permitted to set it up as a defense").

In short, the traditional model of subjective culpability as a requisite for criminal responsibility is, in cases involving a drunken actor, subordinated to a more objective model motivated by utilitarian concerns of general deterrence.[5] Such a transformation is supported by the well-accepted principle

[5] *See* Note, 55 Colum. L. Rev. at 1217.

that only in the rarest case will intoxication preclude the highest culpable states of "intention" or "purpose" or the minimal requirements of conscious cognition and effect required for "knowledge." *Stasio*, 396 A.2d at 1134.[6] Finally, those legislatures conclude that allowing intoxication evidence runs the unacceptable risk of potential manipulation by defendants and will lead to confusion of the jury who may not adequately appreciate that intoxication evidence is to be used for the question of mental state, not for purposes of showing an excuse.[7]

The Constitution does not require the States to structure their criminal codes on a model of liability relying

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[6] "The great majority of moderately to grossly drunk or drugged persons who commit putatively criminal acts are probably aware of what they are doing and the likely consequences. In the case of those who are drunk, alcohol may have diminished their perceptions, released their inhibitions, and clouded their reasoning, but they still have sufficient capacity for the conscious mental processes required by the ordinary definitions of all or most specific mens rea crimes." Murphy, *Has Pennsylvania Found a Satisfactory Intoxication Defense?*, 81 Dick. L. Rev. 199, 208 (1977).

[7] Murphy, 81 Dick. L. Rev. at 203 (citing *Commonwealth v. Graves*, 334 A.2d 661, 667 (Pa. 1975) (Eagen, J., dissenting)), 208. *See* Note, 76 Dick. L. Rev. at 331.

on the subjective culpability of the offender. On the basis of general deterrence, a State may, when the offender stands in a position of responsibility for the resulting events and the ensuing harm is great, impose criminal responsibility without demonstrating any culpable mental state of the actor toward the harm. *United States v. Park*, 421 U.S. 658, 670-73 (1975); *United States v. Dotterweich*, 320 U.S. 277, 281, 285 (1943). Given the constitutional latitude of the States to define offenses, one federal appeals court has described the defense of voluntary intoxication to be a "gratuitous" defense. *United States ex rel. Goddard v. Vaughn*, 614 F.2d 929, 935 (3d Cir. 1980). Similarly, this Court has allowed the States to impose upon the defendant the burden of proving insanity, *Rivera v. Delaware*, 429 U.S. 877 (1976) (dismissing appeal for want of substantial federal question), or extreme emotional distress, *Patterson v. New York*, 432 U.S. 197 (1977), even though the respective defenses went to the accused's mental state. Given the "gratuitous" nature of voluntary intoxication

as a defense, the States can define the culpable mental state for an offense without regard to the offender's intoxication. That some states have instead chosen to allow evidence of intoxication to be admissible does not make constitutionally infirm the public policy decision of those states that have chosen to make the evidence inadmissible. *McMillan v. Pennsylvania*, 477 U.S. 79, 90 (1986).

The principle underlying *In re Winship*, 397 U.S. 358 (1970), requires only that if a State defines the crime to include an element, the State must prove that element beyond a reasonable doubt. *Martin v. Ohio*, 480 U.S. 228, 233 (1987); *Patterson*, 432 U.S. at 205-06, 208-09; *Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975). When the defense is eliminated entirely by the legislature when defining the offense, the *Winship* doctrine simply does not apply. The *Winship* cases also do not require the States, as a matter of federal due process, to offer a particular defense or to define a crime in any particular manner. Indeed, the Court in

Patterson expressly disclaimed such an expansive reach of the Due Process Clause. 432 U.S. at 214-15 n.15.

The decision of the Montana Supreme Court calls into question the authority of the States to determine who can be held criminally responsible for their actions and to declare, in the process, that some evidence is irrelevant in assessing culpability. This Court should grant review to clarify the authority of the States to enact such laws.

II. The Montana Supreme Court's Decision Conflicts With This Court's Rulings and Threatens to Limit the State's Ability to Define Offenses and Adopt Evidentiary Rules.

Just as the States have considerable freedom in defining criminal offenses, the States also have substantial discretion in adopting rules and procedures governing the presentation of evidence. *See Michigan v. Lucas*, 111 S. Ct. 1743, 1746 (1991) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302-03 (1973)); *Rock v. Arkansas*, 483 U.S. 44, 55 n.11 (1987); *Ohio v. Roberts*, 448 U.S. 56, 62-64 (1980). In this

respect, a defendant's right to present evidence or otherwise rebut the prosecution's case is not without limitation. Evidence otherwise relevant to mental state is routinely excluded in accordance with rules designed to assure both fairness and reliability in the ascertainment of guilt or innocence. It is only where application of a State's evidentiary rule so substantially interferes with the accused's ability to present a defense or cross-examine witnesses so as to impair the truth-seeking function of the trial that the Due Process Clause has been implicated.

The landmark case in this regard is *Chambers*. The defendant there was tried for a murder to which another man had repeatedly confessed in the presence of acquaintances. Mississippi's hearsay rule, coupled with a "voucher" rule that did not allow Chambers to cross-examine the confessed murderer directly, prevented Chambers from introducing testimony regarding these confessions, which were critical to

his defense that another man had committed the crime.[8] This Court held that strict application of the State's evidentiary rules denied Chambers a fair trial because the "integrity of the factfinding process" itself was called into question. 410 U.S. at 295. In reversing Chambers' conviction, however, this Court was careful to note:

> In reaching this judgment, we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures. Rather, we hold quite simply that under the facts and circumstances of this case the rulings of the trial court deprived Chambers of a fair trial.

Id. at 302-03.

The Montana Supreme Court cited *Chambers* as authority for the sweeping proposition that ***any*** interference with a defendant's presentation of voluntary intoxication evidence to rebut the prosecution's allegations violates due

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[8] Mississippi recognized a hearsay exception for declarations against interest, but applied it only to declarations against pecuniary interest, not declarations against penal interest. *Chambers*, 410 U.S. at 299.

process, without considering the State's legitimate interest in limiting the use of such evidence. This result extends the protections of the Due Process Clause far beyond that which was intended by this Court in *Chambers* and seriously threatens the State's ability to define criminal culpability or to impose evidentiary restrictions as a matter of public policy.

This Court has not considered the constitutionality of legislative restrictions on voluntary intoxication evidence in light of *Chambers*. The fact that a number of States now restrict significantly the use of such evidence warrants this Court's guidance, especially since voluntary intoxication as it pertains to criminal responsibility has strong policy implications. Unlike the archaic rules at issue in *Chambers*, rules which limit the use of voluntary intoxication evidence reflect valid contemporary concerns regarding criminal responsibility. These rules do not have the same effect of wholly depriving an accused of a valid defense; rather, they simply prevent the defendant from relying upon the fact of his

drunkenness to negate mental state. Given the public policy reasons behind the exclusion of evidence of voluntary intoxication, *Chambers* cannot be construed as guaranteeing a fundamental right to rely on voluntary intoxication as a defense. This case thus presents an opportunity for the Court to clarify the extent to which *Chambers* affects the States' ability to limit certain evidence on policy grounds.

Restricting voluntary intoxication evidence is only one example of legislative policy which could potentially be affected by the Montana Supreme Court's ruling. Most States have adopted a rape-shield statute similar to Fed. R. Evid. 412, prohibiting evidence of a victim's past sexual conduct when consent is at issue. The purpose of these statutes is to encourage rape victims to report crimes, to exclude questionable evidence used to impeach rape complainants, and to end the practice of putting the victim on trial. Wayman, *Lucas Comes to Visit Iowa: Balancing Interests Under Iowa's*

Rape-Shield Evidentiary Rule, 77 Iowa L. Rev. 865, 872 (1992).

Despite the obvious limitations such a rule imposes on a defendant's ability to present a defense, rape-shield statutes have never been declared unconstitutional under the Due Process Clause.[9] Under the Montana Supreme Court's analysis, however, a rape-shield statute such as Fed. R. Evid. 412 would be vulnerable to constitutional attack. Under the reading of *Chambers* by the Montana Supreme Court, the accused's right to defend is declared absolute, a result which threatens any kind of evidentiary restrictions imposed by the state. Given the potential far-reaching effect of the decision

[9] In *Lucas*, the Court considered a constitutional challenge to Michigan's rape-shield statute which required the defendant to give notice prior to introducing a complainant's past sexual conduct with the defendant. It held that failure to comply with the notice requirements could, in some instances, justify the severe penalty of precluding evidence. 111 S. Ct. at 1748. The Court did not decide whether preclusion of such evidence would violate the defendant's Sixth Amendment rights in that particular case, choosing instead to leave that determination to the state court. *Id.* ("We leave it to the Michigan courts to address in the first instance whether Michigan's rape-shield statute authorizes preclusion and whether, on the facts of this case, preclusion violated Lucas' rights under the Sixth Amendment.")

below, the Court should offer its guidance in defining how far States can go in limiting a defendant's ability to present evidence in his defense.

CONCLUSION

For the foregoing reasons, amici respectfully request that the petition for a writ of certiorari be granted.

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